IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.490 of 2004

Estate of B.Kannaih Naidu and
Varadammal, Kannaih Naidu Charities
and Kothandaramasamy Koil rept.
by Managing Trustees
1.C.G.Rajendran
2.K.Ethirajan
3.G.Ranganathan
4.S.Venkataraman .. Petitioners/Plaintiffs

vs.

P.G.Kuppan .. Respondent/Defendant

Revision Petition filed against the order and Decreetal order in I.A.No.424 of 2002 in O.S.No.195 of 1996 on the file of the District Munsif cum Judicial Magistrate, Tirukalugundram dated 16.12.2003.

For Petitioners : Mr.V.Ragavachari
For Respondent : NA

ORDER:

The Civil Revision Petition filed against the order and Decretal order in I.A.No.424 of 2002 in O.S.No.195 of 1996 on the file of the District Munsif cum Judicial Magistrate, Tirukalugundram, dated 16.12.2003.

2.The plaintiffs in O.S.No.195 of 1996 are the revision petitioners before this Court.

3.The plaintiffs filed a suit for declaration to declare that the plaintiffs' title to the properties described in the schedule and for a permanent injunction restraining the defendant from interfering with their possession. The written statement was filed by the defendant on 23.11.1995. Thereafter, on 05.12.2002, the defendant in the suit filed

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I.A.No.424 of 2002 under Order 14 Rule 2(2) (a) of C.P.C to try the jurisdiction point as a preliminary issue. The trial Judge by an order dated 16.12.2003 allowed the said I.A. by holding that the trial Court has no jurisdiction to try the suit and returned the plaint to be filed before the appropriate Court. Aggrieved by the order dated 16.12.2003, the plaintiffs have filed the above revision petition.

4.Heard the learned counsel for the petitioner. I have also perused the documents filed in support of his submissions.

5.The learned counsel for the revision petitioners vehemently contended that the respondent in the written statement filed before the trial Court, did not plead about the lack of jurisdiction and consequently, no issues were also framed with regard to the jurisdiction. In such circumstances, almost after six years, the defendant should not be permitted to raise the issue of jurisdiction as a preliminary issue.

6.He further submitted that Section 6(7) of the Hindu Religious and Charitable Endowment Act does not apply here as the Court as defined under Section 6(7) of the Act means, the Courts in which the suit may be instituted with regard to the dispute referred to in the Act. He pointed out that the suit is for declaration and permanent injunction and therefore the District Munsif Court is competent to try the suit.

7.Though the respondent is served, there is no representation on his behalf either in person or through counsel.

8.Admittedly, the suit was filed in the February 1994 and the written statement was filed in the year 1995. The issue of jurisdiction was not at all raised therein. The jurisdiction issue has to be raised at the earliest point of time and once the person submits himself to the jurisdiction of a particular Court without raising any objection or protest, he is estopped from raising the same, at a later point of time, when he finds that the proceedings are not going in his way. As rightly contended by the learned counsel for the revision petitioner, when there is no pleading, questioning the jurisdiction of the trial Court and no issues were framed in that regard, the petition filed under order 14, Rule 2 (2) (a) is not at all maintainable.

9.Moreover, the Definition "Courts" as per Section 6(7) of Hindu Religious and Charitable Endowment Act relates to the Courts competent to try the disputes referred in the HR and CE Act and whether the suits filed by the plaintiffs against the defendant for declaration and permanent injunction, is such kind of a suit as referred to in under HR & CE Act is a question that has to be determined during the trial on the basis of the evidence that may be adduced, that too after necessary pleadings are pleaded and appropriate issues are framed.

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10. Therefore, the finding of the trial Court that even though there is no pleading in the written statement, questioning the jurisdiction of the Court, still the issue of the jurisdiction could be taken up as a preliminary issue under Order 14, Rule 2 (2) (a) is not correct and the same is liable to be set aside. More over considering the fact that the suit is of the year 1994, it is just and necessary that the trial Court should proceed with the trial as expeditiously as possible and dispose of the suit on merits preferably within a period of three months from the date of receipt of a copy of this order.

11.With the above direction, C.R.P. is allowed. No costs.

vri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The District Munsif cum
Judicial Magistrate,
Tirukalugundram.

1 cc To Mr.V.Raghavachari, Advocate, SR.31004.

C.R.P.(PD)490/04.

NG(CO)
RVL 26.07.2006

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